

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

November 2005

ETHICS UPDATE

In the May 2005 edition of the Utah School Law Update, we provided information about a survey conducted by the Utah Professional Practices Advisory Commission.

The survey revealed that, while most educators act ethically, few are familiar with the Rules of Professional Practices and the consequences of violating those rules.

The results were reported to the State Board of Education. The Board then directed staff from the State Office to create an ethics training that would be available for all educators.

A committee is now working on the Board's directive. Committee members represent many facets of the education community. Licensing specialists Linda Alder, and Rebecca Anderson, and USOE attorneys Carol Lear and Jean Hill represent USOE.

District Human Resource departments are represented by Myra Lynch, Logan District, George Welch, Jordan, Mel Miles, Davis and Rickie McCandless and Beth Strathman from Salt Lake City School District.

Educators are represented by Kaye Chatterton



cation Association, Taylorsville High School Principal Jerry Haslam, and Hawthorne Elementary Principal Patricia Rowse.

Curriculum experts include Mary Alice Rudelich, Curriculum Director for Granite School District, and David Sperry, Dean of the University of Utah College of Education.

UPPAC is represented by Holly Peterson from Cache District, PTA representative Juneil Lyon, Michael Pratt from Alpine District and Ronald Wolff from Morgan District.

The committee has met once so far and will meet again in the next couple of weeks. The group will divide into sub-committees at this second meeting to focus on curriculum standards for specific ethical issues, such as relationships with students, coaching and extracurricular advising, and educator rights, to name a few.

The committee will also discuss effective formats for the training and implementation of the new ethics requirements.

We will keep you informed of the committee's progress through this important change in educator licensing standards.

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UPPAC CASES

The Utah State Board of Education revoked the license of Greydon Anthony Smith. Mr. Smith's revocation results from *Mr. Smith's soliciting minors* over the Internet, sexually explicit conversations with minors over the Internet, and sexual intercourse with a minor. At least one act of sexual intercourse with a minor occurred on school grounds. Mr. Smith has been charged with four first degree felony counts of forcible sodomy, two first degree felony counts of unlawful sexual conduct with a 16 or 17 year old, and one second degree felony count of enticing a minor over the Internet. Respondent has also been charged with one federal felony count.

The State Board reinstated the license of Robert J. Pickering, with conditions. The license was suspended for two years as a result of Mr. Pickering's sexual harassment of a female student, including inappropriate sexual discussions and physical contact with a student.

UPPAC Case of the Month

Certain types of cases bring certain excuses from accused educators. Over the years, UPPAC members may become a bit suspicious when they hear the following phrases in response to allegations of unprofessional conduct:

1. "I didn't want to hurt the student's feelings."
This response is usually given in cases where the educator is accused of in-

appropriate sexual conduct with a student.

Wise educators know they are better off, by far, hurting the student's feelings in the beginning to avoid charges of criminal conduct with a minor later.

If a student sends a suggestive, or even just overly familiar, email to a teacher, the teacher should not respond in kind. Instead, the teacher should gently inform the student that the email is not the kind of thing students should send to their teachers.

2. "I was just doing research." This was the excuse of choice for those accused of inappropriate Internet use.

This excuse is less common now that most edu-

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Eye On Legislation

As one state Legislator commented, "chatter is picking up" as the 2006 Legislative Session draws closer.

Bills that Legislators want prioritized must be in by Dec. 1. That means we will soon see a list of titles, though actual text will come closer to the session for many of the bills.

The "chatter," however, does give a first indication of what Legislators are looking into for the session.

For instance, to paraphrase Mark Twain, rumors of the death of tuition tax credits are grossly exaggerated. Loud rumblings can be heard from several corners bent on passing tuition tax credits.

The task is made more precarious by the tax reform committee which

may eliminate all but a select few credits and deductions, but that has not deterred proponents.

Last year's hard fought victory has deterred, at least for now, the former

tax credit battering ram, Rep. Jim Ferrin. Ferrin continues to state that he will not sponsor tuition tax credit legislation this year. In fact, the proposals being discussed so far are vastly different from Ferrin's prior attempts. From the chatter we have heard, Legislators interested in the credits are looking for ways to give something to public education as well.

What has not changed from last

year is the well-funded lobbying efforts of Education Excellence

and its political action group, Parents for Choice. Legislators are already feeling pressure from this group. Parents for Choice, for example, has made it clear that it will attempt to oust those Legisla-

tors who voted against tuition tax credits in the 2005 session. [Educators can begin now to provide literal and moral support for legislators who, at considerable peril, supported public education.]

Other bills being considered for 2006 include a proposal to provide bonuses to teachers based on their students' progress, a bill to

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Recent Education Cases

Peck v. Baldwinville Central School Distr. (2nd Cir. 2005). The Second Circuit Court of Appeals addressed the familiar problem of displaying student work with a religious theme.

In this case, a kindergarten teacher asked students to create a poster reflecting **what they had learned** during a unit on the environment. One student brought in a poster which stated that the only way to save the environment is through Jesus.

The teacher declined to post the work on the grounds that it was not

the student's work (the student could- the decision not to display a portion n't read so the teacher questioned the of the poster was reasonable under writing on the poster), did not reflect the circumstances. Though there

the lessons taught during the unit and contained religious content.

The student redid the poster, leaving Jesus on it but also referring

to some of the lessons from the class. The teacher displayed the poster, folding over the corner where Jesus was portrayed.

The court was unwilling to rule that

the decision not to display a portion of the poster was reasonable under the circumstances. Though there were pedagogical reasons for covering Jesus—the poster was supposed to depict what the student had learned—the decision may have also reflected a discriminatory purpose.

The court, therefore, ruled that the case could proceed to trial to determine if the censorship of the poster was a legitimate exercise of the school's power.

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UPPAC cases cont.

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cators are aware of their district IT offices. District tech people check the filters on a regular basis to ensure inappropriate material is not easily available to students or staff.

There is no need for an educator to take it upon him or herself to do this kind of research.

Educators who intend to do research that will call up inappropriate websites should get approval from the school or district admini-



stration BEFORE accessing the sites.

3. "I was entrapped."

This has been a popular excuse of educators accused of soliciting sexual activity from undercover police officers.

Entrapment is a popular phrase learned from television dramas, but it rarely works as a defense in the criminal court and it certainly doesn't work with UPPAC.

4. "She (or he) came after me." Another popular excuse of those

accused of sexual activity with students. Please note, it doesn't matter how aggressive the student is in her pursuit of an educator, the adult educator is expected to douse the flames the moment he or she sees the first spark.

5. "It's not mine/I can't have it at home." This excuse has been used to explain an educator's stash of porn, drugs or alcohol at school. Perhaps contrary to the educator's expectations, this excuse does not evoke much sympathy from Commission members.

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Eye on Legislation (Cont.)

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provide funding for tutoring kids who are at risk of failing the Utah Basic Skills Competency Test, and a repeat performance of a bill requiring that students read at grade level before they can advance to the next grade.

The education community can also expect changes to the Carson Smith Special Needs Scholarship program. Rep. Merlyn Newbold will most likely change language in the law to provide the funds to more private school students by eliminating or otherwise changing the current requirement that students already in private schools must be in a school that specializes in serving students

with disabilities in order to be eligible for the scholarship.

On a side note, about 200 students accepted scholarship funds in this first year of the scholarship. Some Legislators and lobbyists



claim that the number of students taking the scholarships is low because the State Board of Education failed to adequately ad-

vertise the scholarship or its definition of a school that "specializes in serving students with disabilities" is too narrow. Neither group of complainants appear to have contemplated the possibility that most parents of students with disabilities simply aren't interested in leaving their current public or private schools or that few private schools were interested in accepting the scholarships, given the low number of schools that applied to take the scholarships.

Of course, the big issue that remains is the state's tax structure. While a flat tax with a few select deductions or credits has been discussed, no formal proposals have been offered yet.

Your Questions

Q: What can I do if a colleague is holding elementary students on his lap despite being told by the principal to stop?

A: An educator who is concerned that a colleague is acting in an unprofessional manner should talk to the building principal or, if the educator is concerned that the principal will not act, the district human resources office.

If the educator has already been reported to the principal and has not stopped the inappropriate behavior, a report to the district ofWhat do you do when. . . ?

fices may be the better option. An educator who does not respond to the directives of the principal may respond once his or her job is more clearly on the line.

And failing to follow a principal's directives is a separate act of unpro-

fessional behavior that the district should be aware of.

Q: What should I say to students who ask why another student, who is a Jehovah's Witness, never says the Pledge of Allegiance?

A: It's a personal matter. The teacher does not (and should not) need to explain the ins and outs of a student's religious beliefs.

Any student has the right to choose not to say the Pledge. A stu-

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Recent Cases Cont.

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Also along religious lines, a federal court in Georgia has entered the evolution v. creationism fray. In <u>Selman v. Cobb County School District</u> (N.D. Ga. 2005) the court found that a sticker placed in biology books violated the Establishment Clause of the First Amendment.

The sticker stated that evolution is a theory, not a fact. It did not offer the alternative theories of creationism or intelligent design, but the court found that, given the circumstances surrounding the use of the sticker, an informed observer would understand that the sticker represented the argu-

ments of advocates for a religious perspective.

The sticker followed well docu-

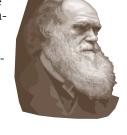
mented citizen opposition to the teaching of evolution and fights with the school board over evolution vs. religious theories.

The court also noted that the effect of the

sticker was heightened by the fact that it was the only scientific theory in the biology book singled out for sticker treatment.

Hess v. Rochester School Dist. (D. Ct. N.H. 2005). The court ruled a teacher must still teach, even if he has ADHD. The teacher claimed as an accommodation that he be allowed to continue letting his students listen to music and play computer games for up to half of class time in order to address his ADHD-induced anxiety.

The court found not only was the requested accommodation unreasonable, it was also ineffective. The teacher was unable to perform his duties even with the requested accommodation.



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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

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dent who makes that choice on a regular basis, for whatever reason, does not open the door for exploration of his or her religious, moral, political or other beliefs.

While a teacher is allowed to answer spontaneous questions that touch on religion from students, the teacher should not single out a student or his/her beliefs.

The best response to the question is short and to the point, without embarrassing either the student asking the question or the student about whom the question was asked.

Q: I received a citation for driving under the influence. Is my license in jeopardy.

A: It depends. Most educators who receive a DUI will not be faced with serious licensing sanctions.

However, if the educator has re-

ceived a number of DUIs in a short time period, or is a drivers education teacher, the Utah Professional Practices Advisory Commission may take some action.

An educator is expected to be a role model for his or her students. That includes modeling compliance with state and federal laws. One DUI citation does not neces-

sarily jeopardize the educator's ability to serve as a role model.

Several DUIs in a short time span, however, are cause for concern, espe-

cially if the educator is supposed to be teaching students to obey the law.

Q: Can a license ever be permanently revoked?

A: Yes, although the State Board has not invoked its power to do so

yet.

State law provides for permanent revocation of an educator's license if the educator has been convicted of a sexual offense against a minor.

While the power to take the license permanently exists, and the Board has revoked the licenses of educators convicted of sexual of-

fenses against minors, it has not been necessary to permanently revoke anyone for several reasons.

One reason is that the crime itself stays on the educator's record for at least 10 years. Second, few of the educators convicted of such crimes have sought or been granted reinstatement. The few that have been reinstated following conviction went through several hoops, including long-term counseling, to get their licenses back.